204; *Vose* v. *Eagle Life and Health Ins. Co.*, 6 Cush (Mass.) 42. Where there is a warranty, as in the principal case, that the answers in the application are full and complete, as well as true, a failure to disclose all known facts is a concealment. *Conn. Mut. Life Ins. Co.* v. *Young*, 77 Ill. App. 440.

JUDGMENT—COLLATERAL ATTACK BASED ON WANT OF SERVICE—CONTRADICTING RECORD.—Action by the plaintiff to remove the clouds cast on his title to land by two judgments rendered against his vendor. As a ground of relief the plaintiff alleged that the latter was not served with notice of suit. The records of the judgments contained recitals of service. *Held*, this was a collateral attack and that the recitals of service in the records were conclusive collaterally. *Estey & Camp et al.* v. *Williams* (1911), — Tex. Civ. App. —, 133 S. W. 470.

Few questions in the law of judgments are more vital or interesting than that involved in the principal case. To estop an individual from showing (except in a direct proceeding), that he has not had his day in court strikes the mind at first blush as being slightly out of harmony with our preconceived ideas of right and liberty. But that such is the law is settled by an overwhelming weight of judicial authority. VANFLEET, COLLATERAL ATTACK, § 468. The recitals of service or other jurisdictional facts in the records of courts of inferior or limited jurisdiction are generally held unimpeachable. *Seefeld* v. *Duffer*, 179 Fed. 214; *Hume* v. *Conduitt*, 76 Ind. 598; while the contrary has been held the law by the courts of a few states. *Salladay* v. *Bainhill*, 29 Iowa 555; *Jones* v. *Terry*, 43 Ark. 230. The recital of jurisdictional facts, including service, in the record of a domestic court is almost universally held to be conclusive, collaterally. *Rumfelt* v. *O'Brien*, 57 Mo. 569; *Western Lumber & Mill Co.* v. *Merchants Amusements Co.*, — Cal. —, 108 Pac. 659. Despite this formidable array of authority the contrary doctrine has been accepted as the law by courts of the highest respectability. *Goudy* v. *Hall*, 30 Ill. 109. According to the latter view the records are accepted as prima facie true. *Ferguson* v. *Crawford*, 70 N. Y. 253; *Holly* v. *Munro*, 55 Wash. 311, 104 Pac. 508. Many arguments are advanced concerning the relative merits of the two conflicting doctrines. Affirmatively, it is asserted that a denial of the existence of such a conslusive presumption in favor of a record's verity would bring disrepute on our judiciary because of the consequent uncertainty of interests and titles based on judicial proceedings. Also, that there is rarely any merit in a collateral attack, and therefore the court should discountenance them in all cases. But against this it is said that a man should not have his rights determined without an opportunity of being heard. Nor that he should be bound because of an inviolable presumption that a court is powerless to assert a fiction. But the conclusion in the principal case is in full accord with the generally prevailing view.

JURY—RIGHT TO TRIAL BY JURY—DEPRIVATION OF RIGHT—CONSTITUTIONALITY OF QUALIFICATIONS—Defendant was convicted of a serious crime. On appeal to the supreme court from the judgment, he claimed that the require-

ment that a juror shall be a taxpayer (Laws of Wash., 1909, p. 131) conflicts with both the Federal Constitution, which guarantees a speedy and public trial by an impartial jury, and the State Constitution, which provides that "the right of trial by jury shall remain inviolate." *Held*, the jury clause of the Fed. Const. does not apply to prosecutions in state courts for violations of state laws; that the state law does not violate the State Const. *State* v. *McDowell* (1911), — Wash. —, 112 Pac. 521.

It is absolutely settled that the U. S. Const. as to jury trial does not apply to criminal prosecutions for violation of a state law. 8 CYC. 1091; *Pearson* v. *Yewdall*, 95 U. S. 294; *Twitchell* v. *Com.*, 7 Wall. 321; *Maxwell* v. *Dow*, 176 U. S. 581. It is also as well settled that it does operate in territories, and that a jury means twelve persons. *Rassmussen* v. *U. S.*, 197 U. S. 516; *Thompson* v. *Utah*, 170 U. S. 343. And that a territorial law that a juror shall be a taxpayer violates the U. S. Const. *Reece* v. *Knott*, 3 Utah 451. Then the question naturally arises, when a state const. says the jury trial shall remain inviolate, How far may a state by general law invade this right by way of imposing qualifications upon jurors? Constitutional guaranties in the various states, that "the right of trial by jury shall remain inviolate," refer to the right as it existed at the adoption of the constitution. PROFFATT, JURY TRIAL, § 84; *State* v. *McClear*, 11 Nev. 39; *Copp* v. *Henniker*, 55 N. H. 179; *Norval* v. *Rice*, 2 Wis. 22. However, it was not the intention of the framers of the constitution to impose restrictions on the legislature as to the manner in which a jury should be selected and obtained. *People* v. *Harding*, 53 Mich. 49; *Stokes* v. *State*, 53 N. Y. 164. The three essential attributes of a jury are numbers, impartiality, and uniformity. *Lommen* v. *Minn. etc. Co.*, 65 Minn. 196. There must be twelve persons, good men and true. *State* v. *McClear*, supra; *Vaughn* v. *Scade*, 30 Mo. 600; *Work* v. *State*, 2 Ohio St. 297. Jury must be impartial, hence to take away the right to challenge for actual bias is unconstitutional. *State* v. *McClear*, supra. But the legislature may prescribe the qualifications of jurors and the mode of their selection. *State* v. *Slover*, 134 Mo. 607. A struck jury is legal. *Fowler* v. *State*, 58 N. J. Law 423; *Lommen* v. *Minn. etc. Co.*, supra. Even though it does not appear that the legislature having the power might put property qualifications so high as to virtually subvert the right of trial by jury, still it has the right to pass laws that are reasonable, the reasonableness being open as a judicial question.

LANDLORD AND TENANT—FORFEITURE OF LEASE—WASTE.—The lessee of a frame building agreed to sublet the same to defendant for the purpose of operating a moving picture theater therein. Defendant made several repairs in the building: tore out window frames and sash in front of the building, removed plastering, cut and removed partitions, put in a new floor, built a new front, and removed a stairway. An action to enjoin the commission of waste was instituted by the owner of the building. Defendant claimed that the building was out of repair and in a dangerous condition; that the front, sills, partitions and studding were rotten; that it was a dangerous place to work in: that defendant showed plaintiff the plans for the proposed